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Oliff & Berridge, PLC  
P.O. Box 19928  
Alexandria, VA 22320

In re Application of KOLTUNOV et al

U.S. Application No.: 09/530,758

Int. Application No.: PCT/IL98/00568

Int. Filing Date: 20 November 1998

DECISION

Priority Date: 20 November 1997

Attorney Docket No.: 106153

For: DETERMINATION OF TEMPERATURE  
AND/OR EMISSIVITY FUNCTION OF  
OBJECTS BY REMOTE SENSING

This is in response to applicants' "Request for Withdrawal of Holding of Abandonment" filed 21 June 2001, "Renewed Petition Under 37 C.F.R. § 1.47(A)" purportedly filed on 26 April 2001, and declaration purportedly filed on 11 May 2001.

#### BACKGROUND

On 20 November 1998, applicants filed international application PCT/IL98/00568, which claimed priority of an earlier Israel application filed 20 November 1997. A copy of the international application was communicated to the USPTO from the International Bureau on 03 June 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 02 June 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 20 May 2000.

On 04 May 2000, applicants filed national stage papers in the United States. The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 30 June 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed along with a surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty (30) months from the priority date.

On 30 November 2000, applicants filed a response to the Notification of Missing Requirements, including a declaration signed by five of the six joint inventors and a petition under 37 CFR 1.47(a).

On 11 December 2000, the DO/EO/US mailed a Notification of a Defective Response (Form PCT/DO/EO/916) along with a Notification of a Defective Oath or Declaration (Form PCT/DO/EO/917), which indicated that the declaration filed 30 November 2000 is not properly executed.

On 03 January 2001, applicants filed a response to the Notification of a Defective Response.

On 26 February 2001, the PCT Legal Office of the USPTO mailed a decision dismissing the petition under 37 CFR 1.47(a) filed 30 November 2000 on grounds that the declaration filed 30 November 2000 is not in proper format.

On 13 June 2001, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the application is abandoned as to the United States for failure to respond to the 26 February 2001 decision within the time period set therein.

On 21 June 2001, applicants filed the present request to withdraw the holding of abandonment. The request states that it is accompanied by a copy of renewed petition under 37 CFR 1.47(a) purportedly filed on 26 April 2001 and a copy of a return postcard which lists a renewed petition under 37 CFR 1.47(a) in its itemized contents and bears a USPTO date stamp of 26 April 2001. In addition, the request states that it is accompanied by a copy of declaration purportedly filed on 11 May 2001 and a copy of a return postcard which lists a declaration in its itemized contents and bears a USPTO date stamp of 11 May 2001.

## DISCUSSION

### I. Request for Withdrawal of the Holding of Abandonment

The evidence of record is sufficient to establish that the renewed petition under 37 CFR 1.47(a) was originally filed on 26 April 2001. Specifically, the copy of the return postcard, which includes a "Renewed Petition Under 37 C.F.R. § 1.47(a)" in its itemized contents and which bears a USPTO date stamp of 26 April 2001, serves as *prima facie* evidence that the declaration was received by the USPTO on 26 April 2001.

### II. Submission of Declaration on 11 May 2001

The evidence of record is sufficient to establish that a declaration was originally filed on 11 May 2001. Specifically, the copy of the return postcard, which includes a "Complete Executed

Declaration/Power of Attorney" in its itemized contents and which bears a USPTO date stamp of 11 May 2001, serves as *prima facie* evidence that the declaration was received by the USPTO on 11 May 2001.

The declaration filed on 11 May 2001 is improper. Specifically, it is not sufficient to submit only the signature page of a declaration. Applicants must file either: 1) a single complete declaration signed by all of the inventors or 2) multiple complete declarations, with each inventor's signature appearing on one of the multiple complete declarations.

### **CONCLUSION**

For the reasons set forth in §I above, the request to withdraw the holding of abandonment is GRANTED.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 13 June 2001 is hereby VACATED.

A proper response must be filed within TWO (2) MONTHS from the mail date of this decision. A proper response must include a properly executed declaration as set forth in §II above. Failure to timely file a proper response will result in ABANDONMENT of the application.

Please direct further correspondence with respect to this matter to the Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



Bryan Tung  
PCT Legal Examiner  
PCT Legal Office

Telephone: 703-308-6614  
Facsimile: 703-308-6459